


# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 17025 KB		<b>FOR FURTHER ACTION</b>		See Form PCT/IPEA/416
International application No. PCT/HU2004/000060		International filing date (day/month/year) 18.06.2004		Priority date (day/month/year) 20.06.2003
International Patent Classification (IPC) or national classification and IPC A61B3/06, A61B3/113, A61B5/00, A61B5/16				
Applicant FEHER, Janos et al.				
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau) a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>				
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>				
Date of submission of the demand  24.02.2005		Date of completion of this report  16.11.2005		
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer  Rick, K  Telephone No. +49 89 2399-7246		



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**Box No. I Basis of the report**

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1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
  - ☐ publication of the international application (under Rule 12.4)
  - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

**Description, Pages**

1-12 as originally filed

**Claims, Numbers**

1-7 as originally filed

**Drawings, Sheets**

1/2-2/2 as originally filed

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
  - ☐ the claims, Nos.
  - ☐ the drawings, sheets/figs
  - ☐ the sequence listing (*specify*):
  - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
  - ☐ the claims, Nos.
  - ☐ the drawings, sheets/figs
  - ☐ the sequence listing (*specify*):
  - ☐ any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	1-7
	No: Claims	
Inventive step (IS)	Yes: Claims	2
	No: Claims	1,3-7
Industrial applicability (IA)	Yes: Claims	1-7
	No: Claims	

2. Citations and explanations (Rule 70.7):

**see separate sheet**

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement**

1. Reference is made to the following documents:  
D1: US-A-4 545 658 (WEISS JOSEPH F) 8 October 1985 (1985-10-08)  
D2: US-A-3 992 087 (FLOM MERTON C ET AL) 16 November 1976 (1976-11-16)  
D3: DE 736 340 C (ZEISS CARL FA) 16 June 1943 (1943-06-16)

2. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of **claim 1** does **not** involve an **inventive** step in the sense of Article 33(3) PCT.

The document D1 is regarded as being the closest prior art to the subject-matter of claim 1, and discloses (the references in parentheses applying to this document) a process for examining the visual functions of the eye (claim 1), which comprises determining with the help of test images the visual function of the eye (col. 4, l. 45-49), then inducing photostress by illuminating the eye with an intense light (col. 4, l. 52-59), and measuring the time needed for the recovery of the visual function before the illumination (col. 4, l. 65-68).

The subject-matter of claim 1 differs from this known process for examining the visual functions in that it further comprises the use of periodically moving test images for the examination, and determining the visual function on the basis of detecting the phenomenon of optokinetic nystagmus.

The problem to be solved by the present invention may therefore be regarded as to allow an objective determination of the photostress recovery time.

The solution proposed in claim 1 of the present application cannot be considered as involving an inventive step (Article 33(3) PCT) for the following reasons.

Document D2 refers to the same kind of process for examining the visual functions of an eye under normal conditions and following visual stress (see D2, col. 2, l. 7-10 and claim 1) as D1 and describes the combined use of a moving test spot and an eye

tracker (claim 1) to objectively determine the visual function (col. 1, l. 36-37) based on the detection of optokinetic nystagmus (col. 1, l. 48-51). Irrespective the difference in publication date, both documents D1 and D2 are closely related and come from the same technical field. Therefore the skilled person would consider to include the above mentioned feature of D2 in the optical measurement device of D1 in order to solve the problem posed.

The subject-matter of claim 1 thus does not meet the requirement of Article 33(3) PCT.

3. The same reasoning applies, mutatis mutandis, to independent apparatus **claims 3 and 7**. For instance, D1 discloses all features of claims 3 (see D1, col. 3, l. 9 to col. 4, l. 11, claim 1 and Fig. 1), except a measuring unit electrically connected to the test unit, which measuring unit contains a nystagometer sensing the movement of the eye and a display unit and time measuring unit connected to it. Again D2 describes the missing features for the same purpose (D2, claim 1).

Furthermore D2 discloses in col. 2, l. 10-12 a light source vibrating with variable frequency as defined in present independent claim 7.

Thus the subject-matter of claims 3 and 7 does not meet the requirement of Article 33(3) PCT.

4. Also dependent **claims 4-6** contain features known per se from the prior art (see D1-D3 and the corresponding passages cited in the search report) or being slight constructional changes which come within the scope of the customary practice followed by persons skilled in the art. The applicant should in particular refer to the following passages:

- claim 4 see D3, p. 1, l. 38;
- claim 5 see D2, viewing screen, col. 3, l. 12;
- claims 6 see D1, filter holder, col. 5, l. 3.

Thus also claims 4-6 not meet the requirements of the PCT with respect to inventive step (Art. 33(3) PCT).

5. In the second line of present independent claim 2, there are obviously some words lacking. However, assuming that the first part of claim 2 is corrected in view of the

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corresponding parts of claim 1, the combination of the features of **claim 2**, i.e. the determination of the visual function based on the critical fusion frequency before and after photostress, is **neither known from, nor rendered obvious** by, the available prior art.